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In the Supreme Court of the United States

OCTOBER TERM, 1954.

No. 687

LOUIS CLIFFORD, SAM GIAIMO and JAMES THOMAS,
Petitioners,

vs.

THE STATE OF OHIO,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO.

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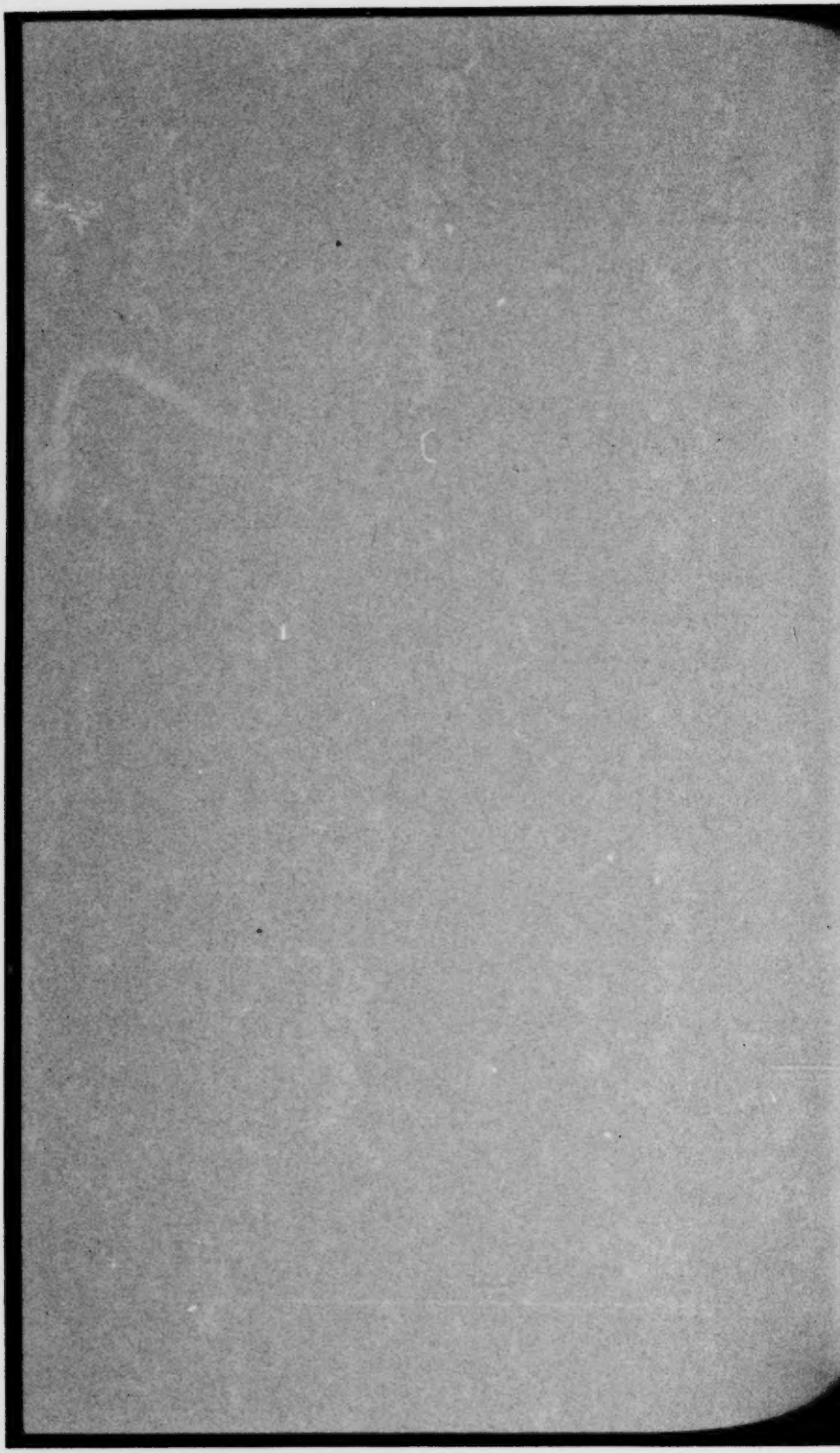

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LOUIS CLIFFORD, SAM GIAIMO and JAMES THOMAS,
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vs.

THE STATE OF OHIO,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO.

Petitioners severally pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Ohio affirming a judgment of the Court of Appeals for the Eighth District of Ohio, Cuyahoga County, which affirmed a judgment of the Court of Common Pleas for Cuyahoga County, Ohio, finding and holding each of Petioners guilty of, and sentencing each of Petitioners for, contempt of court.

OPINIONS BELOW.

The oral decision and opinion of the Court of Common Pleas is unreported and is printed in Appendix A hereto, *infra*, pp. 18-31. The opinion of the Court of Appeals for the Eighth District of Ohio, Cuyahoga County, is printed in Appendix A hereto, *infra*, pp. 31-36, and is reported in 97 Ohio App. 1, 118 N. E. (2d) 853. The opinion of the Supreme Court of the State of Ohio (R. 12-18) is printed in Appendix A hereto, *infra*, pp. 37-42, and is reported in 162 Ohio St. 370, 123 N. E. (2d) 8.

JURISDICTION.

The judgment of the Supreme Court of the State of Ohio (the highest court of the State) was entered on December 15, 1954. (R. 22, 23.) A timely application for rehearing, filed on December 29, 1954 (R. 19-20), was denied on January 5, 1955. (R. 24.) The contempt proceeding was initiated in the Court of Common Pleas of Cuyahoga County, Ohio, against Petitioners jointly by written charges and an order requiring them to show cause why they should not be punished for contempt of that court. (Printed Record below 1-2, 5.*) In the hearing upon the order to show cause in the Court of Common Pleas, the question whether the First and Fourteenth Amendments to the Constitution of the United States constituted a defense to the charge of contempt was raised by Petitioners in the opening statement of their counsel, in the closing arguments of their counsel and by a timely motion for a new trial. (Pr. R. 3, 16-7, 84-5, 87-9, 90-2.) In the Court of Appeals for the Eighth District of Ohio, Cuyahoga County, the foregoing federal question was raised by Petitioners' eleventh assignment of error on appeal. (App. A, p. 33.) In the Supreme Court of the State of Ohio, the foregoing federal question was raised by Petitioners' second assignment of error on an appeal as of right and on a motion to certify and by Petitioners' application for rehearing. (R. 1, 6, 19-20.)

The rights, privileges and immunities claimed by Petitioners under the First and Fourteenth Amendments to the Federal Constitution were denied by the State Courts. (App. A, pp. 34-35, 39-41; R. 22.)

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* The entire printed record below is designated page 11 of the Transcript of Record certified by the Clerk of the Supreme Court of Ohio. For convenience of reference, pages of the printed record below are hereinafter cited as "Pr. R. ....."

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The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3).

QUESTION PRESENTED.

A. Whether, under the circumstances stated below, convictions of employees of a newspaper for contempt of court, based upon the taking and subsequent publication of a photograph of a former local probate judge being arraigned in a state court upon an indictment charging him with embezzlement, violated the freedom of the press guaranteed by the First and Fourteenth Amendments to the Constitution of the United States:

1. For many years the reporting of criminal proceedings in the same local trial court had included the publication of photographs taken in the courtroom.

2. The bench of the same local trial court, which consisted of fifteen judges, had considered the adoption of, but had declined to adopt, a rule prohibiting taking of any picture during criminal trials or proceedings.

3. The judge presiding at the arraignment had not promulgated in writing or announced from the bench any rule prohibiting the taking of a picture during criminal proceedings but, after his recent assignment to the criminal branch of the local court, had informally told certain newspaper reporters, with whom he talked during the pendency of two earlier trials, that he would not permit the taking of a picture during those trials.

4. The presiding judge had informed two newspaper reporters present in his chambers on the afternoon preceding the arraignment that he would not

permit the taking of any picture of the former probate judge, in the courtroom or in chambers, at the time of the arraignment and that he was doing this solely because one of the two local bar associations had recently adopted the Canons of Judicial Ethics and non-compliance therewith would subject him to disciplinary action by the bar.

5. The effect and purpose of taking and publishing the photograph was to emphasize to the public the impartiality with which all persons, regardless of their position or standing in the community, are treated in the administration of justice by the local criminal court and to maintain and increase public confidence in, and public respect for, the court.

6. The picture was taken carefully and unobtrusively and in a fraction of a second with modern photographic equipment; and its taking did not in fact obstruct or interfere with the administration of justice.

7. The very brief pause, which occurred immediately before the court fixed bond, was not made necessary by the taking of the picture but, instead, resulted from the desire of the presiding judge immediately to inquire as to, and to ascertain, the identity of the person who had taken the picture.

CONSTITUTIONAL PROVISIONS INVOLVED.

The provisions of the First and Fourteenth Amendments to the Constitution of the United States, which are involved, are set out below:

> "Article [I]. Congress shall make no law * * * abridging the freedom of speech, or of the press; * * *." (U. S. C. 1952 ed., Vol. 1, p. XLIV.)

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"Article XIV, Section 1. * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; * * *." U. S. C. 1952 ed., Vol. 1, p. XLV.)

In our opinion, Sections 2323.01, 2323.22 and 2705.01 of the Ohio Revised Code are not here involved. However, since the opinion of the Ohio Supreme Court contains a general reference to those statutes (App. A, p. 42, 162 Ohio St. 370, 375), they are printed in Appendix B, *infra*, p. 43.

STATEMENT.

Petitioners, Clifford, Giaimo and Thomas, are respectively the city editor, a reporter and a photographer employed by The Cleveland Press, one of the daily newspapers published in Cleveland, Ohio. Following publication of articles in The Cleveland Press which charged that the judge of the local probate court had been guilty of certain acts of misconduct, the probate judge resigned; and on August 18 and 19, 1953, information circulated among local newspaper reporters that a grand jury, then sitting, was about to return an indictment against the former judge. (Pr. R. 17-9, 32, 43-4.)

After adjournment of court on August 19, 1953, Petitioner Giaimo and a reporter for another Cleveland newspaper were present in the chambers of Common Pleas Judge Joseph Silbert who, pursuant to information communicated to him by an assistant prosecuting attorney, was waiting to receive an indictment charging the former probate judge with embezzlement. After the indictment was handed to the judge, he received a telephone call from counsel for the former judge with respect to setting a time for the arraignment. During that telephone conversation, Judge Silbert specially set a time certain for

the arraignment, to-wit, 10 A.M. on the next day, August 20, 1953, and stated to counsel for the former judge that he would not permit any photographs to be taken in the courtroom or in chambers at the time of the arraignment. (Pr. R. 8-9, 19-20, 63-4, 71.)

At the conclusion of that telephone conversation, Judge Silbert stated to the two reporters present that counsel for the former judge had informed Judge Silbert that a plea of not guilty would be entered; that the taking of any picture in the courtroom or in chambers would not be permitted during the arraignment; that "the court was apologetic about it," but that "nobody is going to jail and nobody is going to be cited for contempt." The Court's *sole* reason for not permitting the taking of a photograph in the courtroom or in chambers during the arraignment was that, since the Cleveland Bar Association (one of the two local bar associations) had recently adopted the Canons of Judicial Ethics, he would be subject to disciplinary action by the bar if he permitted pictures to be taken. (Pr. R. 9, 14, 20, 25, 28-9.)

On the evening of August 19, Giaimo reported the substance of the foregoing by telephone to his superior, Petitioner Clifford. On the morning of August 20, Clifford assigned Petitioner Giaimo, as a reporter, and Petitioner Thomas, as a photographer, to cover the arraignment. Clifford told Thomas the background of the indictment and instructed him to obtain a picture of the former judge being arraigned and cautioned him to exercise great care to avoid causing any disturbance. No one informed Thomas of the statements which Judge Silbert had made to the reporters present in his chambers on the previous day. (Pr. R. 20-1, 33-4, 38, 40-1, 44-7, 52-5.)

Prior to the arraignment on August 20, Petitioner Thomas and a photographer for another newspaper took

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several pictures of the defendant and his attorney in the corridors and assignment room of the courthouse and seated at the trial table during a court recess which preceded the arraignment. (Pr. R. 35-6, 64-6, 73; Defs.-Resp. Exs. A-F incl., Pr. R. 108-113.)

During the court recess and just prior to Judge Silbert's return to the bench for the arraignment, Giaimo and Thomas took positions in a doorway at the front of the courtroom to one side and slightly to the rear of the bench. When the case was called, defendant and his counsel came before the bench; defendant's counsel waived the reading of the indictment and entered a plea of not guilty; and the Judge directed that the plea be recorded. (Pr. R. 22-3, 36-7.) At that point, Thomas took the picture. (Pl.-Rel. Ex. 1, Pr. R. 107.) The picture was taken in a "split second" with a camera having a shutter which worked at 1/400th of a second and with only a slight click and with a flash bulb which burned for 1/50th of a second and made no sound. (Pr. R. 25, 37.)

Thereupon Judge Silbert, before fixing bond, paused to inquire who had taken the picture and, when Thomas replied that he had done so, instructed Thomas to remain. The Judge then fixed bond, which terminated the arraignment; and defendant and his counsel left the courtroom. The Judge then interrogated Petitioners Giaimo and Thomas and was informed that both were employed by The Cleveland Press and were acting under the instructions of their superior. (Pr. R. 10, 23-4, 30, 38.) The Judge then immediately retired to his chambers, telephoned the editor of The Cleveland Press (who knew nothing of the foregoing events) and informed him that nothing would be done if the picture was not published. (Pr. R. 60-1.) The picture was published in the Home Edition of The Cleveland Press for August 20, 1953.

For many years the reporting of criminal trials in the State courts by Cleveland newspapers had included the publication of photographs taken in the courtroom. (Pr. R. 14-6, 32-3, 39.) Canon 35 of the Canons of Judicial Ethics, which the American Bar Association had adopted on September 30, 1937, was adopted by the Cleveland Bar Association on October 13, 1952, but had never been adopted by the Cuyahoga County Bar Association. (Pr. R. 14-5.) The bench of the local common pleas court, which consists of fifteen judges, thereafter considered the adoption of, but declined to adopt, a rule prohibiting the taking of any picture during criminal trials or proceedings. (Pr. R. 11-2.)

Judge Silbert's then assignment to the criminal branch of the Common Pleas Court had begun on May 4, 1953. The foregoing action of the Cleveland Bar Association came to Judge Silbert's attention "some time after the first of the year" (1953). Thereafter Judge Silbert had informally told certain newspaper reporters or photographers, with whom he had talked during the pendency of two criminal trials, that he would not permit the taking of any picture in the courtroom during those trials. However, Judge Silbert had not promulgated in writing, or formally announced from the bench, any rule with respect to taking a picture during a criminal trial or proceeding. (Pr. R. 10-2, 14, 67-8, 70, 72.)

On August 27, 1953, Judge Silbert issued an order directing the Assistant Prosecuting Attorney of Cuyahoga County, Ohio, to prepare and prefer written charges of contempt of court against the Petitioners. (Pr. R. 4-5.) On the same date, written charges (based upon the taking and publishing of the foregoing photograph) were filed and Judge Silbert entered an order directing the Petitioners to show cause why they should not be punished for con-

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tempt of court. (Pr. R. 1-2, 5.) At the hearing held on the charges on September 9, 1953 in the Court of Common Pleas, Petitioners claimed and asserted the rights, privileges and immunities guaranteed by the First and Fourteenth Amendments to the Federal Constitution as a defense to the charge of contempt through the opening statement and closing arguments of their counsel and by a timely motion for a new trial. (Pr. R. 3, 16-7, 84-5, 87-9, 90-2.) In the Court of Appeals for the Eighth District of Ohio, the foregoing federal question was again raised by Petitioners' eleventh assignment of error on appeal. (App. A, p. 33.) In the Ohio Supreme Court the foregoing federal question was again raised by Petitioners' notice of appeal, their second assignment of error on an appeal as of right and on a motion to certify and by a timely application for rehearing. (R. 1, 6, 19-20.)

The rights, privileges and immunities claimed by Petitioners under the First and Fourteenth Amendments to the Federal Constitution were denied by the state courts. (App. A, pp. 34-35, 39-41.)

Execution of the sentence imposed upon each of the Petitioners for contempt of court was stayed on bond pending the appeals in the state courts and by the Ohio Supreme Court pending final disposition of the case by this Court. (R. 21-23; Certificate of Clerk of Supreme Court of Ohio.) The final judgment of the Ohio Supreme Court (R. 23) is printed in Appendix C hereto, *infra*, p. 44.

REASONS FOR GRANTING THE WRIT.

1. The First and Fourteenth Amendments to the Federal Constitution prohibit not only previous censorship of publications but also *any form* of prior restraint upon publications or their circulation. *Grosjean v. American Pub-*

lishing Co., 297 U. S. 233, 248-51; *Near v. Minnesota*, 283 U. S. 697, 713-7. Manifestly, the use of contempt proceedings to restrain newspapers from obtaining or publishing news of a criminal trial, is a form of prior restraint upon freedom of the press which is fully as effective as an express statutory or judicial prohibition against the publication of news of criminal trials or of other public acts of governmental officers.

In *Craig v. Harney*, 331 U. S. 367, this Court said:

> "We start with the news articles. A trial is a public event. What transpires in the court room is public property. If a transcript of the court proceedings had been published, we suppose none would claim that the judge could punish the publisher for contempt. And we can see no difference though the conduct of the attorneys, of the jury, or even of the judge himself, may have reflected on the court. Those who see and hear what transpired can report it with impunity. There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it." (l.c. 374.)

This Court has held that the constantly-increasing complexity of government with the attendant multiplication of opportunities for malfeasance, corruption and official neglect "emphasizes the primary need of a vigilant and courageous press, especially in great cities." *Near v. Minnesota*, 283 U. S. 697, 719-20.

2. The communication of ideas by picture, equally with the printed word, is included within the rights of free speech and free press guaranteed by the First and Fourteenth Amendments. *Burstyn, Inc. v. Wilson*, 343 U. S. 495, 501-2; *Superior Films, Inc. v. Ohio*, 346 U. S. 587, 589.

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3. This Court has determined that the power of a State or its courts to punish for alleged contempts of court, is limited by the guaranties of the First and Fourteenth Amendments. This Court has settled that the power of State courts to punish for alleged contempts can be exercised to abridge or limit the rights of free speech and of free press only when, if, and to the extent that, the exercise of such power is necessary to meet a clear, present and highly imminent danger to the administration of justice and that the unqualified prohibitions of the First Amendment "were intended to give to liberty of the press, as to other liberties, the broadest scope that could be countenanced in an orderly society." *Bridges v. California,* 314 U. S. 252, 263, 265; *Pennekamp v. Florida,* 328 U. S. 331; *Craig v. Harney,* 331 U. S. 367. In the foregoing decisions, this Court emphasized that the objective of the constitutional guarantee of a free press cannot be attained unless that freedom can be exercised during the pendency of, and while public interest is focused upon, an event.

4. Whether an alleged contempt occurs within or outside the courtroom may be relevant upon an issue with respect to whether a particular act did *in fact* substantially interfere with, or constitute a "clear and present danger" to, the administration of justice. Whether an act allegedly constituting contempt occurs in the presence of the court may also determine whether summary punishment for contempt without giving notice, granting a hearing or taking evidence, constitutes due process of law. However, nothing in the decisions of this Court or in constitutional principle suggests that the power of a state court to abridge or limit freedom of speech and of the press is any greater because the allegedly contemptuous act occurred in the presence of the court. Specifically, nothing in the decisions of this Court warrants a conclusion

that the contempt power may be exercised to abridge those freedoms, even though the allegedly contemptuous act occurred in the presence of the court, where such act did not in any way obstruct, or constitute a "clear and present danger" to, the administration of justice.

5. Manifestly, the accuracy of no means or form of reporting the arraignment could exceed, or even equal, that of taking and publishing the picture. The resignation and indictment of the former probate judge had resulted from disclosures made by The Cleveland Press. There is no higher public interest in the maintenance of a free press than that the press shall be free to keep the people informed with respect to the administration of justice in their courts. In the instant cast, the effect and purpose of taking and publishing the picture were not to impair the dignity of the court or to bring it into public disrespect or disrepute. Instead, the effect and purpose were to emphasize to the public that in the Common Pleas Court of Cuyahoga County any one charged with a criminal offense, no matter how high the official or other position which he then held or previously had held, was treated precisely the same as the most humble citizen and thereby to sustain and increase public confidence in, and public respect for, the local courts and the administration of justice in those courts. No written description could serve that purpose and objective as well as a photograph.

6. The only alleged interference with the administration of justice in this case is that a brief pause—less than a minute—occurred during the arraignment. Even this brief pause was not made necessary or caused by any act of Petitioners but, instead, by the desire of Judge Silbert immediately to inquire as to, and immediately to ascertain, the identity of the person who had taken the picture. The

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defendant's attorney was unable to recall at what point during the arraignment the picture had been taken because the incident did not divert his mind from the matter which he was handling before the court (Pr. R. 66). Manifestly, any sound was less than that customarily incident to spectators entering and leaving a courtroom. (*Supra*, p. 7.)

The fair inference from the evidence is that this pause was not made necessary or caused by the allegedly contemptuous act of Petitioners but by the court's understandable but unjustified pique occasioned by his belief that some one had disregarded his informal statements to the two reporters who had been present in his chambers on the previous afternoon.

The arraignment proceeding involved neither jurors nor witnesses. The taking and publication of the photograph did not, we submit, cause any substantive or substantial interference with, or create any "clear or present danger" to, the administration of justice. The State courts did not find to the contrary; but, had they done so, their finding would not have been controlling in this Court on the questions of federal constitutional right presented in this case.

Doubtless pictures could be taken to such an extent or in such a way or with such antiquated equipment or under such circumstances as to interfere with the administration of justice. But none of those hypothetical situations is present in the instant case. Nevertheless, the decision of the Ohio Supreme Court rests, at least in part, upon a hypothetical assumption (wholly unrelated to the facts of this case) that pictures might be taken to such an extent, with such equipment, under such circumstances or in such a way as to interfere with the administration of justice. (App. A, 41; 162 Ohio St. 370, 374.)

7. For many years the reporting of criminal trials and proceedings in the local common pleas court (including the branch thereof presided over by Judge Silbert) by Cleveland newspapers had included the publication of photographs taken in the courtroom. After the adoption of Canon 35 of the Canons of Judicial Ethics by one of the local bar associations on October 13, 1952, the fifteen judges of the Court of Common Pleas for Cuyahoga County considered, but declined to adopt, a rule prohibiting the taking of pictures in the rooms of that court. If the taking of a picture, particularly under circumstances such as those present in the instant case, substantially or at all interfered with the administration of justice, it is incredible that the judges of that court would not have adopted such a rule or that Judge Silbert, who had been on the bench for eighteen years, would not have adopted such a rule long prior to the forepart of 1953, when he heard of the recent action of one of the two local bar associations.

8. The contempt charged in the written citation included the taking and publishing of the picture. At the hearing, Judge Silbert ruled that the taking and publishing of the picture constituted "one continued act of contempt." (Pr. R. 8, 59.) Immediately after the conclusion of the arraignment, Judge Silbert requested the editor of The Press not to publish the picture and stated that if the picture were not published, "the situation could be satisfactorily concluded." (Pr. R. 60.) Plainly, the contempt power was utilized directly to censor the publication of news.

9. Notwithstanding the holding of this Court, that neither an "inherent tendency" nor a "reasonable tendency" to interfere with the orderly administration of justice, will justify an abridgment of the constitutional free-

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doms of speech and the press (*Bridges v. California*, 314 U. S. 252, 273), the Ohio Supreme Court held that a mere "potential possibility" of causing "a distraction" is sufficient to empower the Ohio courts to abridge those freedoms. (App. A, p. 36; 162 Ohio St. 370, 374.)

10. Citing *United States v. United Mine Workers*, 330 U. S. 258, and *Gompers v. Buck's Stove & R. Co.*, 221 U. S. 418, Respondent contended below that the federal constitutional rights claimed by Petitioners could not be asserted as a defense to the contempt charge because violation of a void order is nevertheless contempt. Judge Silbert held that Petitioner Thomas had not violated, but that Petitioners Giaimo and Clifford had violated, an "express order" of the court (i.e. his informal statements in chambers to two reporters on the evening before the arraignment). (App. A, pp. 23-24, 29-31.) Respondent's contention was plainly inapplicable to Petitioner Thomas, was not in accord with Ohio law and was not a ground of the decision of the Ohio Supreme Court.

Under Ohio law the simple violation of an order, which unconstitutionally abridges the freedom of the press, does not constitute a contempt of court. *State v. Morrow*, 57 O. App. 30, motion to certify overruled 57 O. App. XXXVI. The Ohio Supreme Court did not affirm the conviction of any of Petitioners upon the ground that the federal constitutional rights claimed by him were not, or under state practice could not be, properly interposed as a defense to the contempt charge. Instead, that court held that the federal constitutional rights claimed by Petitioners were not, as a matter of federal constitutional law, broad enough to constitute a good defense. (App. A, pp. 39-41; 162 Ohio St. 370, 373-4.)

Moreover, the informal statements of the trial judge in chambers were made late in the afternoon preceding the

arraignment which he had set for 10:00 a.m. on the next day. Assuming that a remedy in a higher court for testing the validity of such an alleged order was technically available to Petitioners, the federal constitutional rights claimed by them would have been lost before any relief could have been obtained; and to hold that such an illusory remedy barred Petitioners from asserting their federal constitutional rights, would have been to make an alleged state practice a vehicle for nullifying those rights. Federal constitutional rights cannot be nullified by such means in the State courts. *Ward v. Love County*, 253 U. S. 17, 22; *Postal Telegraph Cable Co. v. Newport*, 247 U. S. 464, 475-6; *Davis v. Wechsler*, 263 U. S. 22, 24; *Young v. Ragen*, 337 U. S. 235, 238; *Enterprise Irrigation Dist. v. Farmers Mutual Canal Co.*, 243 U. S. 157, 164.

Furthermore, the Ohio Supreme Court's dubious holding, that the trial judge's informal statements made to two newspaper reporters in chambers, constituted an "express order" of the court, would have been subject to independent review by this Court, had the Ohio Supreme Court denied the federal constitutional rights claimed by Petitioners upon that ground and would have raised a question of due process of law under the Fourteenth Amendment.

11. The decision of the Ohio Supreme Court is, we submit, in conflict with the decisions of this Court hereinbefore cited. If that decision does not conflict with those decisions of this Court, then it clearly raises a question with respect to the application of the First and Fourteenth Amendments to the Federal Constitution to the power of state courts to punish for contempt, which has not been settled by this Court. In either view, the great and nationwide importance of the question is, we believe, patent.

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CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

DECISION OF THE COURT OF COMMON PLEAS.

(September 9, 1953.)

SILBERT, JOSEPH H., *J.*: I think the only simple question in this entire case is the one whether the Court made an order, whether the order was reasonable and whether it was violated by the respondents.

In the contempt citation the three respondents are charged with directing and taking this photograph contrary to and in disobedience of the express order made by the Court which thereby transgressed the dignity and honor of the Court and obstructed the orderly administration of justice.

Mr. Edwards asked, did it obstruct the orderly administration of justice? Well, it did. I was in the midst of the arraignment proceedings, court was open and it was because of the disturbance to my rear that the proceedings were interrupted.

If this camera—I am not familiar with cameras—was as noiseless as the respondent Thomas says, or Mr. Edwards contended, it would not have disturbed the Court as it did. The proceedings were interrupted and they were interrupted for a few minutes, until the Court ascertained the cause of the interruption.

There was a deliberate violation of a Court order. Was it reasonable? Well, I have a Canon of Ethics which I believe very highly I am bound by, at least in my own mind I am bound by it.

When my attention was called to the fact that the Canon of Ethics or Rules of Conduct, Judicial Rules of Conduct, were adopted by the Cleveland Bar Association unanimously—frankly, I didn't read it very carefully and I wasn't interested in seeing whether the t's were crossed

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or the i's were dotted—it was enough for this Court that these Canons were adopted and the substance provided for the fact that no pictures were to be taken. I upheld that rule as soon as I learned about it, and I made no exception in any case.

So the respondent Clifford, City Editor of the Cleveland Press, decides in his own mind that the order wasn't a lawful one and he is going to disobey it and disregard it, and he instructs respondent Giaimo to go down to court with respondent Thomas to take this picture.

Did Giaimo know that a picture was going to be taken in defiance of an express order given to him? He told me so in open court when I asked him why he did it. He didn't say, "Judge, I had nothing to do with it. I didn't know a picture was going to be taken." He said it was ordered by my boss.

Is the respondent Thomas guilty of anything? He is guilty of disturbing the Court, creating a disturbance in the court, because it did create a disturbance. I interrupted the arraignment proceedings. It doesn't matter whether there were one hundred people in the courtroom or ten or twelve. I couldn't tell you how many were in the courtroom. I wasn't interested in that. I didn't dream at the time it would become an issue later. I am certain the courtroom wasn't crowded, and I am certain there weren't many people in the courtroom.

So the photographer does something which, in my experience of 18 years on the bench has not been done. He takes a picture without asking the Court whether it is all right.

Heretofore photographers or reporters have asked this Court. Giaimo has asked, "Can we take a picture?" I would set out the conditions under which a picture could be taken, and until the adoption of the Canon of Ethics,

in a desire and in recognition of the fact that these boys have to make a living and in recognition of the fact that maybe it will be a feather in their cap if they do take a picture, where there were no objections the Court permitted it.

The Court permitted it in May, 1952, during the proceedings that we had in the Civil Branch in the land forfeiture cases. The Court permitted pictures to be taken in the Birns trial when Birns was arraigned in 1950. The Court does not deny that.

But the Court has challenged anyone to say that to my knowledge pictures were taken since the time this Court has learned of the adoption of the Canon of Ethics by the Cleveland Bar Association which, in my mind, at that time and at this moment binds this Court.

If we are going to expect lawyers to live up to the Canon of Ethics why should not Judges set an example by living up to it? And the fact that some Judges do not live up to the Canon of Ethics, am I my brother's keeper? Am I responsible for the other Judges? What can this Court do about it?

I have tried, and every newspaper reporter of all three papers will testify to it, I have tried to the best of my ability to live up to the highest standards of judicial ethics.

All the three Editors know this Court. Mr. Seltzer, for whom I have a personal high regard and a personal affection, I am sure if he was asked to testify as to this Court's reputation and character would not say some of the things the newspapers have said or the Press has said in the past that I discriminated, that I singled out the Brewer case and made things different. Reporters of all three papers, including James Vail of the Press, none of whom were talked to by Mr. Mahon before they were put

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on the stand as we didn't want to suggest anything, testified and we wanted them to tell the truth.

In the Svet case tried on May 20th, trial concluded on May 28th, a sanitary policeman charged with statutory rape, he wasn't a Judge. I had no interest in him other than the fact that I was going to comply with the rule of conduct which was set out for me, which is not binding upon the newspapers or the public—I make no such contention—but in my judgment is a rule of conduct laid down for the Courts and is binding on me, and, therefore, that was the basis of a change of policy on the part of this Court.

In every instance, just as Mr. Giaimo testified, Mr. Vail testified and Mr. Flannagan or Watzman, I was apologetic about it because I know most of these boys are young boys. I knew respondent Giaimo when he first started. I remember when he was a prisoner in Germany. I have nothing but affection for him. He wouldn't think of being in contempt of this Court, but the fact that his boss ordered him to do it is no less contemptuous than if he did it on his own as a matter of law.

I am speaking at length because this is the first time since the occurrence happened on August 20th that this Court has had an opportunity to give its side of it, to say something in its behalf.

I have read the headlines and I have got them here: "Equal Justice." Sure equal justice. This Court would be the last one knowingly to do anything other than to give equal justice to everyone.

"Dictatorial-Autocratic." Who is there in this community who knows this Court that would say that? Would Mr. Edwards say to the Court at any time—dictatorial, autocratic; or would Mr. Joe Hostetler or Bill Marsteller say that of me?

Yet the people who have read the newspaper would say that this Court, drunk with power, having some feeling of kinship for ex-Judge Brewer, put into effect an order which was unusual, which was different.

Let us see how much of a break this Court gave to Judge Brewer the morning of the arraignment. This is something the respondents don't know.

Mr. Harvey Weitzel, who is the deputy sheriff in charge of the Criminal Branch, came to me and said, "Judge Silbert, I have a problem. You are the presiding Judge of the court. Those who are familiar with criminal procedure know that if the presiding Judge makes an order everyone from the Sheriff to the County Prosecutor will follow it." He said, "I have a problem."

"What is your problem?"

He said, "You know Judge Brewer is going to be arraigned in a few minutes. How about fingerprinting? What shall we do about fingerprinting?"

I said, "That is no problem. What do you generally do?"

He said, "We fingerprint every defendant."

I said, "By all means fingerprint him. He is no different from anyone else."

It was at my order that ex-Judge Brewer was ordered to be fingerprinted. If I had any idea at all of being considerate of him in the slightest degree I should think the lesser of the two acts would be the taking of the picture and giving an order that he should not be fingerprinted.

I don't know whether it would have been discovered whether he was fingerprinted or not. I knew he was no different from any other defendant. I didn't put into effect the order requiring the fingerprinting, and I wasn't going to make an exception in his case.

I do feel just as strongly as your Press editorial feels about equal justice. I felt this case wasn't different. I

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felt ex-Judge Brewer was entitled to a fair trial, to the same protection that the Court has afforded every other defendant, even including Patrolman Neal. Neal was tried and after a conviction a request was made for pictures to be taken and the Court refused. Did this Court feel kindly towards Officer Neal? The Court, after the conviction, would not permit him to be out on bond during the pendency of a motion for a new trial, which is something unusual, because all Common Pleas Courts permit a defendant to be out on bail until the motion for a new trial is set.

I felt so strongly about the defendant's guilt and I was so contemptuous of him that I would not afford him that courtesy, and I said I would let him out on bond after the ruling of the motion for a new trial because if I did not the Court of Appeals would, but I would increase his bond, which I did.

In that case back in June, not in August, the *Svet* case in May, the *Neal Burmeister* case in June, I had in effect the same order that no pictures were to be taken.

These defendants, these respondents, each and every one of them the Court at this time finds guilty of the charges contained in the citation.

They are not being found guilty because the Court has spent sleepless nights, which I have. The Court has aggravated itself to death and his family and close friends, which is something the Court doesn't to this minute know why.

What did the Court do in the Brewer case that the Court didn't do in every other case? That is not why these defendants are found guilty. There is aggravation and grief in every profession. I am not finding them guilty for any personal aggravation the Court may have had.

I am finding them guilty of the charges contained in the citation: Respondents Giaimo and Clifford for vio-

lating the express order of the Court and also for disturbing the Court, and respondent Thomas for disturbing the Court.

My own idea is that he knew about the order of the Court; otherwise, why the conversation between Giaimo and Thomas that if anything happened, if there is any trouble, you let me handle it.

There is no question but what he disturbed the Court and obstructed the administration of justice. There is no question but what the proceedings were stopped just as Mr. Towell testified, and after this conversation with Mr. Thomas and Mr. Giaimo the Court then continued with the arraignment, and at the conclusion of the arraignment the Court called in Mr. Giaimo and Mr. Thomas.

The Court finds respondents Clifford, Giaimo and Thomas guilty of contempt of this Court.

Before the Court imposes sentence—I am speaking at length—if you will bear with me if I use a personal note it is because it is the first time I had an opportunity to have my say in court.

There is much made about freedom of the press. Freedom of the press has its limitations, and I am not lecturing anyone. I am giving the Court's thinking.

With power comes responsibility. Just because this Court is presiding as a court does not mean this Court should act arbitrarily, that this Court should become an autocrat and a dictator. I think power should make men humble. If a person was not humble before he assumes power, once he assumes power I don't know of a better way of showing thankfulness to the good Lord by putting you in the position you are in by having the power because that person received it by the grace of God.

I am not sitting on this bench because I am smarter than other lawyers or more deserving. The good Lord, in His wisdom, saw fit to make it possible for me to sit on

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this bench and I am happy doing what I am doing. I cannot do that at the expense of stultifying myself, at the expense of having people laugh in the Court's face or thumbing noses at the Court.

The job isn't worth it, and in my judgment the Court deserves to aggravate himself to death. For doing what? For doing the wrong thing, for making a situation, for discriminating? No. But for doing that which the Court has done from the 4th of May in this community and from the 1st of January, when I first learned about the Canon of Ethics.

This Court has been fortunate, and I say proud of it, that every time this Court has run for re-election or when this Court was a candidate in 1948 for election to this Court, I have had the approval, the favorable approval of all the three daily newspapers.

Your Editor, and I assume the City Editor, too, and those in authority at the Press, were kind enough to say nice things about the Court. All the newspapers approved of my conduct, and the Bar Association has upon every occasion, and when I was a candidate for election in 1948.

I have tried to live up to the standards that the newspapers, the civic groups and the Bar Association had from time to time defended, and for that I find myself being ridiculed by the paper and I find I am not giving equal justice to everyone. I find I am a dictator and that I suddenly crawled in bed with Judge Brewer.

To my knowledge, I have never so much as shaken hands with Judge Brewer at any time he has been on the bench. He is a Judge of another court. He was the Judge of the Probate Court. The only time I would meet Judge Brewer would be at the elevator or occasionally in the barber shop. I don't think I ever talked ten words with him. Why would I want to differentiate this case with any other?

Some of these things I am saying to get off my chest because I haven't had an opportunity to. It has nothing to do with the finding of the Court. I want to say these things before I impose sentence.

If the Court was going to show any consideration to Judge Brewer this Court could have charged the Grand Jury to adjourn court in July as is customary. In fact, the court attache and the Prosecutor's office urged the Court to adjourn court in July so that my figure would show more favorably because the prisoners waiting in jail would add up to the number of cases considered. I didn't do that.

I have no interest in it one way or the other. I knew Brewer's case was coming up before the Grand Jury. Ex-Judge Brewer was treated the same as any other defendant was treated by this Court.

No person would be in their right mind in wanting to get into an argument with a newspaper, let alone an elected public official. But, on the other hand, the Judges must have the courage of their convictions. Judges must at times arise when called upon. I would have tried to avoid any situation like this, but if it is thrown in my lap where I have no alternative a Judge must have courage to arise to the occasion.

I wasn't happy about citing the respondents. I wouldn't be happy about citing anyone who was connected with a little group, let alone one of our daily newspapers and one of the three very important and very effective newspapers.

This was a direct challenge, and the alternative to incitation was for the Court to lose its usefulness on the bench. I could no longer command the respect of any lawyer or court attache or anyone with whom the Court may have court business, if the Court did not meet this open challenge of open defiance of a court order.

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I don't claim I am a hero in doing what I did. I am unhappy about this situation but have arisen to face it.

I remember a case not so long ago, the John Lewis case, when John Lewis said that the order of the Court was invalid and illegal and defied the order of the Court. Judge Goldsboro convicted him of contempt and it went to the Supreme Court of the United States. The Supreme Court said it wasn't for John Lewis to say whether the order was legal or illegal. He had his right of appeal.

You have a principle involved here. I recognize that. You have a job to do. You are trying to take pictures. You feel by reason of the Canon of Ethics that are adopted by the Bar that your job becomes difficult, maybe impossible.

I recognize that and I am sympathetic with you, but I say to you that there is a right and wrong way of meeting that. If it is an invasion of freedom of the press, if you have a right to take pictures as you contend—and I am not passing on that, I don't have too strong feelings about picture taking where there is consent by the accused—but if you had filed a writ of prohibition to test out that question that would have been done in an orderly manner.

But just to come in and force your way into the courtroom without any notice to the Court and take the picture in open defiance of the Court, well, if that is permitted we would have chaos in our courts. We wouldn't have orderly procedure in court, and everything that our boys have been fighting for and those things that were held sacred and dear are meaningless.

No one could have quarreled with the Press or News or Plain Dealer if they would have come in May and filed a writ of prohibition. I would have helped them perfect a record. But not in the manner in which you have done it.

I have spoken at length. I didn't mean to belabor the issue. I thought of these pictures having been taken and

none of them were taken in my courtroom while the Court was in session subsequent to October 13, 1952.

I thought I ought to take this opportunity to speak. I don't want to make headlines. It won't make the same headlines that the other stories have.

For my own self-respect I have gone up to Mr. Seltzer's office already when I was a Police Judge, where I thought an injustice was done to me, and I told Mr. Seltzer my side of it and I didn't expect any corrections.

But I want you to know I haven't suddenly lost my head. I am no different than I have been.

What I have said I have said not because it is going to make headlines but because I want the people to know that this Court believes in equal justice as strongly as one can believe, believes in the administration of justice, believes that all laws are for all the people, weak, powerful, rich and poor, and as long as this Court is worthy of being a Judge on this bench I hope the people will think I am worthy of being a judge on this bench.

I am going to try to live up to the ethics of this Bar Association of ours, and if there is a dispute between the newspaper, the publishers and the Bar Association, whether it is the American Bar Association or the Cleveland Bar Association or the State Bar Association, I think those things can be handled in an orderly manner, but they are not handled by taking the law into your own hands.

As late as today's paper The Cleveland Press carries the story that this was the first time this Canon of Ethics was brought into use or play. I haven't talked to Judge Merrick since this happened and he has not talked to me. But on March 7, 1953, in the case of the State of Ohio versus William J. Frawley, 623,654, Marvin Green was sentenced to one hour in jail for contempt in the presence of the Court. He was a photographer for the Plain Dealer,

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who took a picture. Judge Merrick had expressed that no picture be taken. Subsequently Green came in open court and apologized and he was released.

I didn't exactly set a precedence. I might say that at the time I came here on May 4th I knew of Judge Merrick's action. I had read it in the newspapers. It just verified my determination of not permitting any pictures to be taken because Judge Merrick was my predecessor here as presiding Judge.

The Court has no desire to be unduly severe. The Court wants to do justice. The Court wants to do justice under the circumstances and under the situation in the case.

I have said at a time when I was in Traffic Court that a fine in one case would be justice and in another case it wouldn't be justice because the money wouldn't mean anything; that a suspension of the license would be more effective.

I tried to weigh the situation at the time, the particular type of case, the defendant, the act that is committed and tried to the best of my ability—we are only mortals and we make mistakes but we try not to—to have the penalty fit the offense.

I am going to pronounce sentence as to each defendant.

As to the defendant Thomas, as a matter of law, I cannot say that he deliberately violated the order of the Court. I think he did, but we don't convict people on thinking. But he is guilty of disturbing the Court, of having this picture taken without any notice or authority from the Court, causing the proceedings to be disturbed. However, he may not have known of the order of the Court and he may have relied upon the custom that he testified to about having taken all these many pictures in previous years.

The Court will fine him $100 and will suspend the entire sentence in his case, because I think he is an innocent victim of circumstances, except that he is guilty of the offense.

As to the defendant Giaimo, while I am sympathetic with him, he acted under order and direction of the Court. Probably if I was in Giaimo's place I would do the same thing. He either has to comply with it or quit his job. Nevertheless, as a matter of law, that is no defense. He did violate the order of the Court.

As to respondent Giaimo the Court will fine him $100 and costs.

As to the defendant Clifford, we have an entirely different situation. We have a situation here of an open defiance not only on the part of respondent Clifford but also directing the others to commit the contemptuous act. I believe that respondent Clifford probably thought in his own mind he was doing the right thing. I want to be fair. I can't conceive of anyone just knowing that he is doing the wrong thing brazenly doing it. I think in his own mind he thought the order was of no legal effect.

But in my judgment it is not for respondent Clifford to determine whether the order was right or wrong, and if he wasn't satisfied with the order he had a recourse.

He would have lost that picture but, on the other hand, The Cleveland Press knew in May no pictures were permitted in my room and they knew it in June. They could have easily gone into court and secured the writ and gotten it advanced for hearing.

The Court cannot look upon the acts of the City Editor in the same light as it did as to respondents Giaimo and Thomas. I think this was a deliberate violation of a Court order acting under the assumption that the order wasn't a valid one. But that is not the right given to lawyers and

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to lay people to determine in their own minds that they don't have to abide by an order of the Court. If that were so we would have confusion and chaos of justice.

I am going to assess a fine of $500 and costs and order the defendant to the custody of the Sheriff for one hour.

OPINION OF THE COURT OF APPEALS OF THE EIGHTH DISTRICT OF OHIO, CUYAHOGA COUNTY (APRIL 14, 1954).

SKEEL, *J.*:

This appeal comes to this court on questions of law from a judgment of guilty of contempt of court entered upon trial in the Common Pleas Court. The facts are not in dispute.

On August 19, 1953, the defendant, Sam Giaimo, a reporter for the Cleveland Press, was in the chambers of Common Pleas Court Judge Joseph H. Silbert, awaiting the return of an indictment against Nelson J. Brewer for embezzlement. Brewer had some time prior to that date resigned as Judge of the Probate Court of Cuyahoga County. Judge Silbert told Mr. Giaimo that an indictment had been returned and that Judge Brewer would be arraigned at 10 A.M. on August 20, 1953, and directly told Mr. Giaimo in the presence of another reporter that he would not permit the taking of photographs in the court room or chambers of the court at the time of the arraignment. That such order was in conformity with Canon No. 35 of the Canons of Judicial Ethics of the American Bar Association. In direct defiance of the court's order against picture taking, while the court was in session, upon the arraignment of Judge Brewer on Aug. 20, 1953 at 10 A.M., the defendants in carrying out their respective parts in the acts of contempt of court charged against them (the defendant, Clifford, directing that the picture

should be taken after knowledge of the court's order; defendant Giaimo assisting in taking the picture and defendant, Thomas, acting as camera-man) took a picture of the court proceedings of the arraignment and delivered the plate to the Cleveland Press for publication.

From a judgment of guilty of contempt of court as to each of the defendants, they claim the following errors:

"1. The finding of guilty against defendants-respondents-appellants and each of them, is not sustained by sufficient evidence and is contrary to law.

2. In finding the defendants-respondents-appellants and each of them had been guilty of contempt of court.

3. In finding that defendants-respondents-appellants and each of them had been guilty of misbehavior in the presence of, or so near the court or judge, as to obstruct the administration of justice.

4. In finding that the acts of defendants-respondents-appellants and each of them, obstructed the administration of justice in the case of the State of Ohio against Nelson J. Brewer, being case No. 63332 on the docket of said court.

5. In holding that the publication of the photograph of the arraignment of Nelson J. Brewer in connection with the aforesaid case was a contempt of court.

6. In finding that the defendants-respondents-appellants and each of them had been guilty of contempt of court in that they disobeyed an express order of the court.

7. In taking judicial notice of matters not properly within the knowledge of said court.

8. In taking judicial notice of and admitting in evidence matters which were not competent, relevant or germane in connection with the charges preferred against defendants-appellants and each of them.

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9. In excluding evidence offered by defendants-respondents-appellants which was competent, relevant or germane in connection with said charges.

10. In finding the defendants-respondents-appellants and each of them guilty of contempt of court in violation of the provisions of Section 11, Article I of the Constitution of the State of Ohio.

11. In finding the defendants-respondents-appellants and each of them guilty of contempt of court in violation of the provisions of the first through the fourteenth amendment of the Constitution of the United States.

12. In basing the findings and judgment of guilty of contempt of court on a Canon of Judicial Ethics.

13. In failing to request the assignment of another judge of the Court of Common Pleas of Cuyahoga County to hold the hearing on the written charges filed against the defendants-respondents-appellants.

14. The findings and judgment of the court are contrary to the law and the evidence.

15. In committing the several errors of law occurring at the trial to which exceptions were taken by the defendants-respondents-appellants at the time.

16. Other errors manifest from the face of the record."

It is first claimed by the defendants that the order was not properly issued, not having been journalized, the claim being made that a court speaks only through its journal. Such rule has application to the judgments or orders of the court when dealing with the trial of cases filed and invoking the court's jurisdiction. A judge is at all times during the sessions of the court, empowered to maintain decorum and enforce reasonable rules to insure the orderly and judicious disposition of the court's business. An order made directly to one in attendance of a

judicial proceeding, that certain conduct would not be permitted while the court was in session, need not be journalized to give such order legal effect, particularly with regard to those who are so directed and act with full knowledge and in defiance of the order.

The judge in enforcing orders directing proper and necessary decorum in the court room, while the court is in session, must see to it that the rules enforced are reasonable and necessary for that purpose. Under the undisputed evidence in this case, the rule against taking photographs in a court room while the court is in session has much support. Such a rule is in force in all of the Federal Courts of the United States, is clearly stated in the Canons of Judicial Ethics of the American Bar Association, and is recognized as necessary court room decorum by many state and local Bar Associations and by a great many individual judges of state courts. It is therefore impossible for this court to hold that the trial court, in promulgating the rule against photographs, which rule has received such wide acceptance in courts of law as being necessary to the impartial administration of justice, abused its discretion.

It is also claimed by defendants that the enforcement of such rule directly contravenes the constitutional right of freedom of the press. In considering this question, other constitutional guarantees, all of equal importance, must be taken into consideration. The Constitution of this State has vested its judicial power in the courts and charge the Judges of our court system with the obligation of administering justice without fear of favor, without respect to persons, and free from distractions or disturbances that are inimical to judicious conduct, looking only to the best interests of the litigants whose rights are the subject of a proceeding. The rules of court room conduct must be such

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as to remove it from the distractions and disturbances of the market place, and to maintain as nearly as possible an atmosphere conducive to profound and undisturbed deliberation. The right to trial in a court room, conducted and maintained in an atmosphere that bespeaks the profound and dignified responsibilities with which those who are conducting its proceedings—dealing with human rights as they must—are charged, is basic. A court in enforcing reasonable court room decorum, is preserving the constitutional and unalienable right of a litigant to a fair trial, and in preserving such right, the court does not interfere with the freedom of the press. A fearless and untrammelled judiciary is a necessary bulkwark in protecting liberty under law, and in preserving the rights of the people. There is no claim in this proceeding that all who wanted to attend this session of the court were not permitted to do so, or that the opportunity to report the proceeding was not afforded in keeping with court room decorum, such right being limited by requiring that the reporter act so that the proceeding of the court should not be disturbed.

In the case of *Bridges vs. California*, 314 U. S. 252, the Supreme Court of the United States held that both state and federal courts have the power to protect themselves from disturbances and disorders in the court room by the use of proceedings in contempt and that power cannot be challenged as conflicting with constitutionally secured guarantees of liberty. The constitutional right of freedom of the press was not violated by the order of the court in the proceeding which was the subject of this action and that claim is therefore overruled.

The evidence shows that the acts of defendants caused a disturbance and distracted the court in the proceeding in which the picture was taken. The defendants claim

that such disturbance was only for a short time, or "momentary" in duration, and so constitutes no justification for this proceeding. It is enough if defendants' acts in ignoring the court's order not to take pictures caused a distraction or had the potential possibility of doing so. The disturbance and distraction caused by picture taking cannot be repaired after the event. The flashlight inevitably startles those nearby when used without notice. Its use is not conducive to sustained mental effort. If a photographer can take one picture, he can take two or a dozen. If one photographer can take pictures, others should have equal rights. Nor is there any justification because of the character of the proceeding then in progress. It would constitute utter confusion to attempt a differentiation between the character of the proceedings in progress and none were contemplated by Judge Silbert's general order against picture taking while the court was in session. In fact this proceeding was specifically designated as included in the prohibition against picture taking during court proceedings under Canon No. 35.

The courts belong to the people. The people elect the judicial officers who are charged with the responsibility of presiding over sessions of the court in the administration of justice under the law. When the court is in session it is under the complete control of the judge whose directions, reasonably necessary to maintain order and prevent unnecessary disturbance and distraction, must be obeyed. Deliberate disobedience of such orders constitutes a contempt of court punishable under statutes of this state.

We find no reversible error in the proceedings of this case and the judgments are therefore affirmed. Exceptions noted. Order see journal.

HURD, P.J., KOVACHY, J., concur.

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OPINION OF THE SUPREME COURT OF OHIO.

Decided December 15, 1954.

This is an appeal from a judgment of the Court of Appeals which affirmed a judgment of the Common Pleas Court of Cuyahoga County, finding the defendants (appellants herein) guilty of contempt of court.

The defendants, three in number, are employees of The Cleveland Press. Sam Giaimo is a reporter, James Thomas is a photographer, and Louis Clifford is city editor.

An indictment against a former probate judge had been returned and he was scheduled to appear in the Common Pleas Court for arraignment on the morning of August 20, 1953. During the afternoon of August 19, in chambers, the judge before whom the accused was to appear informed Giaimo and other reporters that no pictures would be permitted in the courtroom during the arraignment or while the court was in session. Giaimo communicated this order to his superior, Clifford, the city editor, and was instructed by Clifford to take pictures and to take Thomas with him for that purpose. Clifford specified particularly that a photograph should be taken of the former probate judge as he stood before the bench in the courtroom while being arraigned.

The instructions were followed; pictures were taken and were published. Thereupon the judge who presided at the arraignment ordered the filing of written charges of contempt against the three defendants.

After an extended hearing, held before the judge who had presided at the arraignment, all were found guilty. Clifford was fined $500 and costs and ordered into custody of the sheriff for one hour. Giaimo was fined $100 and costs. Thomas was fined $100 and costs which were suspended.

Sixteen specifications of error were urged in the Court of Appeals, most of which need not be discussed. They included asserted violation of constitutional rights vouchsafed under Section 11 of Article I of the Constitution of Ohio and under the provisions of the First through the Fourteenth Amendments to the Constitution of the United States and also included error in the basing of the findings and judgment of guilty of contempt of court on the Canons of Judicial Ethics and in the failure to request the assignment of another judge to hear the charges.

After affirmance of the judgment by the Court of Appeals, the cause came before this court upon the allowance of a motion to certify the record.

OPINION. PER CURIAM.

The assignments of error in this court are substantially the same as in the Court of Appeals.

The case has been ably and exhaustively argued by counsel for both sides, both orally and by written briefs, and this court is appreciative of the assistance so rendered. The record has been studied. The conclusion of this court is in entire harmony with that reached by the Court of Appeals.

In the excellent opinion of the Court of Appeals (97 Ohio App., 1) all material questions raised by the defendants were considered and passed upon. We can do no better than to approve and adopt that opinion which says in part:

"It is first claimed by the defendants that the order was not properly issued, not having been journalized, the claim being made that a court speaks only through

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its journal. Such rule has application to the judgments or orders of the court when dealing with the trial of cases instituted and invoking the court's jurisdiction. A judge is at all times during the sessions of the court, empowered to maintain decorum and enforce reasonable rules to insure the orderly and judicious disposition of the court's business. An order made directly to one in attendance of a judicial proceeding that certain conduct would not be permitted while the court was in session need not be journalized to give such order legal effect, particularly with regard to those who are so directed and act with full knowledge and in defiance of the order.

"The judge in enforcing orders directing proper and necessary decorum in the courtroom, while the court is in session, must see to it that the rules enforced are reasonable and necessary for that purpose. Under the undisputed evidence in this case, the rule against taking photographs in a courtroom while the court is in session has much support. Such a rule is in force in all of the federal courts of the United States, is clearly stated in the Canons of Judicial Ethics of the American Bar Association, and is recognized as necessary courtroom decorum by many state and local bar associations and by a great many individual judges of state courts. It is therefore impossible for this court to hold that the trial court, in promulgating the rule against photographs, which rule has received such wide acceptance in courts of law as being necessary to the impartial administration of justice, abused its discretion.

"It is claimed also by defendants that the enforcement of such rule directly contravenes the constitutional right of freedom of the press. In considering this question, other constitutional guaranties, all of equal importance, must be taken into consideration. The Constitution of this state

has vested its judicial power in the courts and charged the judges of our court system with the obligation of administering justice without fear or favor, without respect to persons, and free from distractions or disturbances, that are inimical to judicious conduct, looking only to the best interests of the litigants whose rights are the subject of a proceeding. The rules of courtroom conduct must be such as to remove it from the distractions and disturbances of the market place and to maintain as nearly as possible an atmosphere conducive to profound and undisturbed deliberation. The right to trial in a courtroom conducted and maintained in an atmosphere that bespeaks the profound and dignified responsibilities with which those who are conducting its proceedings—dealing with human rights as they must—are charged, is basic. A court in enforcing reasonable courtroom decorum, is preserving the constitutional and unalienable right of a litigant to a fair trial, and in preserving such right, the court does not interfere with the freedom of the press. A fearless and untrammelled judiciary is a necessary bulwark in protecting liberty under law and in preserving the rights of the people. There is no claim in this proceeding that all who wanted to attend this session of the court were not permitted to do so, or that the opportunity to report the proceeding was not afforded in keeping with courtroom decorum, such right being limited by requiring that the reporter act so that the proceeding of the court should not be disturbed.

"In the case of *Bridges v. California,* 314 U. S., 252, 86 L. Ed., 192, 62 S. Ct., 190, 159 A. L. R., 1346, the Supreme Court of the United States held that both state and federal courts have the power to protect themselves from disturbances and disorders in the court-room by the use of

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proceedings in contempt and that power cannot be challenged as conflicting with constitutionally secured guaranties of liberty. The constitutional right of freedom of the press was not violated by the order of the court in the proceeding which was the subject of this action and that claim is therefore overruled.

"The evidence shows that the acts of defendants caused a disturbance and distracted the court in the proceeding in which the picture was taken. The defendants claim that such disturbance was only for a short time or 'momentary' in duration and so constituted no justification for this proceeding. It is enough if defendants' acts in ignoring the court's order not to take pictures caused a distraction or had the potential possibility of doing so. The disturbance and distraction caused by picture taking cannot be repaired after the event. The flashlight inevitably startles those nearby when used without notice. Its use is not conducive to sustained mental effort. If a photographer can take one picture, he can take two, or a dozen. If one photographer can take pictures, others should have equal rights. Nor is there any justification because of the character of the proceeding then in progress. It would constitute utter confusion to attempt a differentiation between the character of the proceedings in progress, and none were contemplated by Judge Silbert's general order against picture taking while the court was in session. In fact this proceeding was specifically designated as included in the prohibition against picture taking during court proceedings under Canon No. 35.

"The courts belong to the people. The people elect the judicial officers who are charged with the responsibility of presiding over sessions of the court in the administration of justice under the law. When the court is in session,

it is under the complete control of the judge whose directions, reasonably necessary to maintain order and prevent unnecessary disturbance and distraction, must be obeyed. Deliberate disobedience of such orders constitutes a contempt of court punishable under statutes of this state."

For the reasons so stated, the judgment of the Court of Appeals is affirmed.

Judgment affirmed.

WEYGANDT, C.J., MIDDLETON, TAFT, HART, ZIMMERMAN and STEWART, JJ., concur.

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APPENDIX B.

Ohio Revised Code, Section 2323.01:

"A judgment is the final determination of the rights of the parties in action. A direction of a court or judge, made or entered in writing and not included in a judgment, is an order."

Ohio Revised Code, Section 2323.22:

"All judgments and orders must be entered on the journal of the court, and specify clearly the relief granted or order made in the action. The entry must be written into the journal as soon as the entry is filed with the clerk or directed by the court and shall be journalized as of the date of the filing of said entry or of the written direction by the court."

Ohio Revised Code, Section 2705.01:

"A court, or judge at chambers, may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice."

APPENDIX C.

JUDGMENT OF THE SUPREME COURT OF OHIO.

(December 15, 1954.)

APPEAL FROM THE COURT OF APPEALS OF CUYAHOGA COUNTY.

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Cuyahoga County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said Court of Appeals be, and the same is hereby, affirmed; and it appearing to the Court that there were reasonable grounds for this appeal it is ordered that no penalty be assessed herein.

It is further ordered that the appellee recover from the appellants its costs herein expended taxed at $_____.

ORDERED, That a special mandate be sent to the Court of Common Pleas of Cuyahoga County, to carry this Judgment into Execution.

ORDERED, That a copy of this entry be certified to the Clerk of the Court of Appeals of Cuyahoga County, "for entry."

(Application for Rehearing denied January 5, 1955.)

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HAROLD B. WILLEY, Cl

In the Supreme Court of the United States

OCTOBER TERM, 1954.

No. 687.

LOUIS CLIFFORD, SAM GIAIMO and JAMES THOMAS,
Petitioners,

vs.

THE STATE OF OHIO,
Respondent.

PETITIONERS' REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

RAYMOND T. JACKSON,
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In the Supreme Court of the United States

OCTOBER TERM, 1954.

No. 687.

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Petitioners,

vs.

THE STATE OF OHIO,
Respondent.

PETITIONERS' REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

1. Respondent asserts, in substance, that "the only issue" is whether a court has "inherent power to regulate procedure and decorum in its courtroom while in session" and to punish, as contempts, acts which are committed in its presence and interfere with that judicial function. (Resp. Br. 4.) Respondent's statement of the "issue" is not only erroneous but completely begs the question. That, either inherently or by statute, Ohio courts possess such power is not, and never has been, questioned in this proceeding. Instead, the federal question presented below and in this Court is whether the exercise of that judicial power is subject to the First and Fourteenth Amendments to the Federal Constitution and, if so, whether, in the instant proceedings, the Ohio courts violated the freedom of the press guaranteed by those amendments.

2. Respondent's contentions, that no substantial federal question is involved and that the decision below was based only on State law, are severally untenable. (Resp. Br. 2-3.)

First: Contrary to Respondent's contention (Resp. Br. 2, 14-5, 23), this Court has never held that the rights and liberties guaranteed by the Federal Constitution have no application to contempt proceedings whenever the allegedly contemptuous act occurred in the presence of the court; and the cases cited by Respondent do not support its contention.

In *Fisher v. Pace*, 336 U. S. 155, an attorney had been found guilty of contempt for his conduct during a trial. The only ground upon which certiorari was sought and granted was a claim that, as a matter of procedure, the petitioner had been denied due process of the law in violation of the Fourteenth Amendment. (l.c. 159.) Respondent's quotation from the majority opinion is only part of a statement that, where an alleged contempt is committed in the presence of the court, summary conviction and punishment constitutes due process of law provided that the facts, on review, are found adequate to support a conviction. (l.c. 159-60.) This Court held the Fourteenth Amendment applicable but not violated; and any rights of petitioner under the First Amendment were not raised or considered. In a dissenting opinion, which concluded that the facts did not support the conviction for contempt, two justices, as part of a preliminary review of the narrow limits of judicial power summarily to punish for contempt, said:

> "In *Bridges v. California*, 314 U. S. 252; *Pennekamp v. Florida*, 328 U. S. 331; and *Craig v. Harney*, 331 U. S. 367, we narrowly restricted the power to punish summarily for constructive contempts in order to maintain freedom of press and of speech in their preferred position. Freedom of speech in the courtroom deserves the same protection." (l.c. 163.)

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The statement which Respondent cites and quotes from the opinion in *Bridges v. California*, 314 U. S. 252, 266 (Resp. Br. 2, 14-5) plainly does not, as Respondent contends, stand for the proposition that the rights and liberties guaranteed by the First and Fourteenth Amendments to the Federal Constitution have no application to contempt proceedings whenever the allegedly contemptuous act was committed in the presence of the court. The error in Respondent's construction of the language cited and quoted from the opinion in the *Bridges* case is emphasized by the following facts. The Justice, who wrote the *Bridges* opinion, subsequently concurred in the language hereinbefore quoted from a dissenting opinion in *Fisher v. Pace*, 336 U. S. 155, at 163, and wrote the opinion in *In Re Oliver*, 333 U. S. 257. In the *Oliver* case, numerous constitutional limitations upon a court's power summarily to punish alleged contempts committed in its presence are reviewed. (l.c. 273-8.) Manifestly, Respondent's construction of the language quoted from the *Bridges* opinion cannot be reconciled with either of the foregoing and subsequent opinions.

Indeed, it is clear that the trial court could not have summarily punished either Petitioner Clifford or Petitioner Thomas for their alleged contempt.

Second: Respondent contends that the decision below was based (presumably solely) upon State law because the State courts held that certain State statutes did not require all orders to be in writing and journalized and that the proceeding came within the purview of another State statute. (Resp. Br. 2-3.) This contention is patently erroneous for several reasons.

(a) Where, as in the instant proceeding, a controlling issue is whether state action, legislative or judicial, violates a federal constitutional right claimed by one before the

court, a decision, which denies the federal constitutional right, can not rest upon state law. Unless the claimed right is sustained under state law, the unavoidable question is whether state law contravenes the federal constitutional right.

(b) The State courts expressly held:

> "The constitutional right of freedom of the press was not violated by an order of the court in the proceeding which was the subject of this action and *that claim is therefore overruled.*" (Pet. App. A, 35, 41.)

(c) The interpretation of the State statutes cited by Respondent (Resp. Br. 2-3) was irrelevant to the federal question presented and was an issue in the State courts solely because the written charges against the Petitioners were that they had violated "an express order." (Pr. R. 2.) Manifestly, the written charges defined and limited the things for which Petitioners could lawfully be found guilty of contempt.

3. Respondent asserts in substance that the rights granted by the First and Fourteenth Amendments are subordinate to the personal views and preferences of a state court judge; for they repeatedly contend that a violation of any "express order" is contempt *per se* upon the theory that in law, even though not in fact, it obstructs the administration of justice. (Resp. Br. 5, 6, 18.) Respondent further contends that the holding of the State court that a mere "potential possibility" of causing a "distraction" (Pet. 14-5) permits a restriction on freedom of speech and of the press notwithstanding the *Bridges* case and like decisions for the reason that a court has inherent power to prevent disturbances and disorder in the courtroom and because "The judge's interpretation and discretion as to what may distract or disconcert his court

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must be final." (Resp. Br. 18-9, 16.) If that be true then, so far as the Federal Constitution is concerned, State courts have arbitrary and unrestrained power to abridge the freedom of the press with respect to public trials and proceedings in the courts. In other words, the freedom of the press in this field, if any, depends upon the sensibilities, eccentricities, and caprice of each judge and not upon any substantive test or rule. Plainly, that is not the law. *Craig v. Harney*, 331 U. S. 367, 376-7.

4. Among errors in Respondent's statement of facts and proceedings below are the following:

(a) In an effort to create an impression that more than a momentary pause during the arraignment was occasioned by the Court's desire to inquire as to the identity of the person taking the picture, Respondent refers to a subsequent conversation between the Court and Petitioner Giaimo as though it had occurred during the arraignment. (Resp. Br. 7.) In fact the record on this point shows:

> "Q. What occurred as the picture was taken? A. There was a click and a flash and the Judge finished the sentence he was speaking and turned in our direction and asked, 'Who took that picture?'
>
> And Mr. Thomas said, 'I did.'
>
> And the Judge said, 'You remain here.'
>
> That took a few seconds. The Judge proceeded with the setting of the bond, and Mr. Towell said, 'Let the record show we reserve the right to withdraw the not-guilty plea.' " (Pr. R. 23.)

(b) Contrary to Respondent's assertion (Resp. Br. 18), the written charges alleged that Petitioners "entered the courtroom of said court and took a photograph showing Nelson J. Brewer being arraigned, *which photograph was later published* in The Cleveland Press, a daily newspaper of general circulation in the State of Ohio and par-

ticularly in Cuyahoga County, Ohio, *all of which was contrary to and in disobedience of the express order* made by the Honorable Joseph H. Silbert. * * *" (Pr. R. 2.)

(c) Contrary to Respondent's claim that Judge Silbert "merely mentioned" the Canons of Judicial Ethics to the newspaper reporters in his chambers as evidence that he was not being arbitrary or abusing his discretion (Resp. Br. 5), Judge Silbert expressly stated that he acted *solely* because of the recent adoption of the Canons by one of the two local bar associations (Pr. R. 14-5).

(d) Respondent repeatedly asserts either that the Petitioner Thomas or that all Petitioners had notice and full knowledge of the alleged order and were severally adjudged guilty of contempt for violating such order. (Resp. Br. 4, 5, 6, 9-10, 11, 23.) In fact, the court did not find Petitioner Thomas guilty of violating the alleged order but only of "disturbing the court" (Pet. App. A 23-4) and expressly stated that he was unable to find that Petitioner Thomas had known of the alleged order and had not relied upon established custom. (Pet. App. A 29-30.) Indeed, the testimony affirmatively established without contradiction that Petitioner Thomas knew nothing of the conversation in chambers between the Judge and two newspaper reporters. (Pr. R. 21, 31, 34, 40, 47.)

5. Respondent cites and quotes at length from *Ex Parte Sturm,* 152 Md. 114, 136 Atl. 312 (1927) which was decided many years before this Court in *Bridges v. California,* 314 U. S. 252 (1941) established the rule applicable to this case. As in the present case, respondent in the *Bridges* case relied upon state court decisions. However, this Court, in holding that such decisions could not be accepted as a guide, said:

> "* * * we cannot allow the mere existence of other untested state decisions to destroy the historic con-

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stitutional meaning of freedom of speech and of the press." (l. c. 268.)

In 1949 the Maryland court expressly recognized and adopted the rule laid down by this Court in *Bridges v. California*, 314 U. S. 252, *Pennekamp v. Florida*, 328 U. S. 331 and *Craig v. Harney*, 331 U. S. 367. *Baltimore Radio Show, Inc. v. State*, 193 Md. 300, 67 Atl. (2d) 497, 507-8 (cert. den. 338 U. S. 912).

CONCLUSION.

For the reasons stated in the petition and in this brief, the petition for writ of certiorari should be granted.

Respectfully submitted,

RAYMOND T. JACKSON,
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CHARLES D. JOHNSON,
Attorneys for Petitioners.

FILED
APR 30 1955
HAROLD B. WILLEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1954.

No. 687

LOUIS CLIFFORD, SAM GIAIMO and JAMES THOMAS,
Petitioners,

vs.

THE STATE OF OHIO,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

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In the Supreme Court of the United States

OCTOBER TERM, 1954.

No. .....

LOUIS CLIFFORD, SAM GIAIMO and JAMES THOMAS,
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VS.

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Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

OBJECTIONS TO JURISDICTION.

There is no substantial federal question involved which would require this Court to review this case.

The Ohio Supreme Court decided this case in accordance with statutes of this State and in accordance with the applicable decisions of this Court.

"Freedom of the Press" has been invoked by the Petitioners under the First and Fourteenth Amendments to the Federal Constitution in an attempt to reduce the authority of a judge over the conduct of his courtroom while in session. If such a right should yield to this claim of "freedom of the press," the authority and dignity of all of the courts would be seriously affected.

The challenge in this case was the court's right to forbid the taking of photographs in the courtroom while the court was in session and to exercise its inherent power to punish for contempt committed in the face of the court in defiance of such order of the court.

No one of the decisions of this Court relied upon by the petitioners in their application for this writ supports their claims in this case. On the other hand, this Court decided in *Fisher v. Pace*, 336 U. S. 155, 93 L. Ed. 435 (1949) that such contempt power of the court is not open to question. Mr. Justice Reed delivered the opinion in that case and stated:

(336 U. S. at pp. 159-161):

"Historically and rationally the inherent power of courts to punish contempts in the face of the court without further proof of facts and without aid of jury is not open to question. This attribute of courts is essential to preserve their authority and to prevent the administration of justice from falling into disrepute."

In *Bridges v. California*, 314 U. S. 252, 266, 86 L. Ed. 192, 205, 62 S. Ct. 10, 159 A. L. R. 1346, this Court held that the power of the state and federal courts to protect themselves from disturbances and disorders in the courtroom by the use of proceedings in contempt cannot be challenged as conflicting with constitutionally secured guaranties of liberty.

The petitioners state:

"In our opinion, Sections 2323.01, 2323.22 and 2705.01 of the Ohio Revised Code are not here involved. However, since the opinion of the Ohio Supreme Court contains a general reference to those statutes (App. A, p. 42, 162 Ohio St. 370, 375), they are printed in Appendix B, infra, p. 43." (Pet., p. 5.)

Both the Court of Appeals of Cuyahoga County and the Ohio Supreme Court had these statutes before them for consideration in deciding this case. The Petitioners were urging in the Court of Appeals and the Ohio Supreme Court that the order of the Common Pleas Court was not a

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valid one because it was not in writing nor journalized as required by Revised Code Sections 2323.01 and 2323.22. The Court of Appeals and the Ohio Supreme Court said in their opinions in answer to this claim:

> "Such rule has application to the judgments or orders of the court when dealing with the trial of cases filed and invoking the court's jurisdiction. A judge is at all times during the sessions of the court, empowered to maintain decorum and enforce reasonable rules to insure the orderly and judicious disposition of the court's business." (Pet. App. A, pp. 33, 39.)

The Respondent urged in the Court of Appeals and the Ohio Supreme Court the application of Ohio Revised Code Section 2705.01 (Pet., App. B, p. 43), which provides:

Ohio Revised Code, Section 2705.01:

> "A court, or judge at chambers, may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice."

This case comes within the purview of that statute and the Ohio Supreme Court so held (Pet., App. A, p. 42).

The act of the petitioners was a direct contempt committed in the presence of the Court. The Common Pleas Court could have acted summarily in accordance with this Statute. Written charges were filed and a formal hearing was had but the fact that the Court did not act summarily does not change the nature of the contempt, nor the issue involved. *Myers v. State,* 46 O. S. 473; *Lowe v. State,* 9 O. S. 337; 9 *O. Jur.,* pp. 15-17, Sec. 4.

The decision of the Ohio Supreme Court was based on State law. There is, therefore, no substantial federal question involved.

QUESTION PRESENTED.

Certain claims hereinafter commented upon, are being made by the petitioners as representing the "question presented" in this case. However, we believe the question to be and the only issue:

> **Whether a court has inherent power to regulate procedure and decorum in its courtroom while in session and to exercise its power to punish for contempt committed in the presence of the court, those who thereby interfere with this judicial function.**

The petitioners contend that the question presented in this case is a violation of their constitutional right of "freedom of the press" as guaranteed by the First and Fourteenth Amendments to the Federal Constitution. "Freedom of the press" must not be confused with an abuse of such liberty by invading the domain of the courts, which the petitioners unquestionably did in this case.

They state that the conviction for contempt was based upon, not only the taking, but the subsequent publication, of the photograph. The record shows that the finding that the petitioners were guilty of contempt was based upon the violation of the court's order in taking the photograph in the courtroom while the court was in session, and not for the publication of the photograph (Pr. R. 5) (Pet., App. A, pp. 23-24). We are not dealing in this case with any out-of-court contempts by "publication."

1. The allegation that for many years the reporting of criminal proceedings in the same local trial court had included the publication of photographs taken in the court room has no bearing on the question presented (Pet. p. 3). The court made an express order in the case at bar, which the petitioners violated with full knowledge of the order.

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2. Nor does the allegation that the fifteen judges of the Common Pleas Court had considered, but declined to adopt, a rule prohibiting the taking of pictures during criminal trials, have any bearing (Pet. p. 3). Such an order lies within the discretion of the individual judge in presiding over his courtroom.

3. Nor does the allegation that Judge Silbert did not issue the order in writing or announce it from the bench, have any bearing (Pet., p. 3). The record shows that these petitioners had notice of the order and acted with full knowledge of such order in taking the picture in question.

4. Nor does the allegation that Judge Silbert advised the petitioners that in making the order in question he was complying with the Canons of Judicial Ethics (Pet., pp. 3-4). The court merely mentioned the Canon to the newspaper reporters in chambers the day before the arraignment of Brewer to show that he was not being arbitrary or abusing his discretion in giving the order he gave.

5. It is alleged that the effect and purpose of taking and publishing the photograph was to maintain and increase public confidence in, and public respect for, the court (Pet. p. 4). Where would we have any public confidence in, or public respect for, the courts if the courts were without power to preside over their courtrooms without disturbance and interference as happened in this case?

6. The petitioners state that the picture was taken carefully and unobtrusively and, therefore, did not in fact obstruct or interfere with the administration of justice (Pet., p. 4). Violation of an order of the court is a criminal contempt since it is an act obstructive to the administration of justice. The taking of this photograph was intended to obstruct the court in carrying out its order, and thus an

interference with a judicial function and an act obstructive to the administration of justice.

7. The petitioners claim that a very brief pause occurred when the photograph was taken, which resulted from the desire of the presiding judge to inquire as to the identity of the person who had taken the picture (Pet., p. 4). Whether there was a very brief pause or a long pause, or even if there had been no pause in the proceedings as a result of the picture taking, this was a contempt committed in the face of the court in defiance of the court's order. Further, the taking of the photograph did create a disturbance and caused an interruption in the arraignment proceedings.

STATEMENT OF THE CASE.

Judge Joseph H. Silbert was sitting as Presiding Judge of the Cuyahoga County Common Pleas Court, Criminal Branch, during the May, 1953 term of said Court. On August 19, 1953 the Grand Jury of Cuyahoga County returned an indictment against former Probate Judge Nelson J. Brewer.

At about 4 o'clock in the afternoon on August 19th, Petitioner Sam Giaimo, representing the Cleveland Press, and Sanford Watzman, a reporter for the Cleveland Plain Dealer, were in Judge Silbert's chambers. They had been there because they had been informed that an indictment was about to be brought up by the Grand Jury Foreman against Mr. Brewer and they wanted to know when the arraignment would be had.

Judge Silbert informed the two reporters that arrangements had been made for the arraignment the following morning and that in view of Canon 35 of the Canons of Ethics of the American Bar Association, adopted by the Cleveland Bar Association on October 13, 1952, no pictures

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would be permitted to be taken in the courtroom during such arraignment, or while the court was in session (Pr. R. 9).

Sam Giaimo, on the evening of August 19th, informed Petitioner Louis Clifford, City Editor of the Cleveland Press, about Judge Silbert's order that no photographs were to be taken in the courtroom during the arraignment of Mr. Brewer (Pr. R. 25).

The following morning, on August 20th, Louis Clifford instructed Petitioner Thomas to go to the Criminal Courts Building with Giaimo, and to take photographs of Mr. Brewer, and particularly to take a photograph of Mr. Brewer standing before the bench in the courtroom while being arraigned upon the indictment (Pr. R. 33-34). Clifford also instructed Giaimo to take Thomas with him to the Brewer arrignment and to cover the story (Pr. R. 26-27).

During the arraignment of Mr. Brewer, while Mr. Brewer and his counsel were standing before the bench of the Court, the Court was suddenly disturbed and the proceedings were suddenly interrupted by Petitioner James Thomas, a photographer for the Cleveland Press, who took a flashlight photograph showing Mr. Brewer and his counsel facing the bench (Respondent's Exhibit 1; Pr. R. 107).

Judge Silbert immediately stopped the proceedings, inquired as to who took the photograph, was informed by Giaimo and reminded him of his order that no photographs were to be taken in his courtroom while the Court was in session. Giaimo responded that this particular photograph had been ordered taken by his "boss" (Pr. R. 24).

After the arraignment, Judge Silbert telephoned Louis B. Seltzer, Editor of the Cleveland Press, informed him

about the photograph having been taken and suggested that the picture not be published in the newspaper (Pr. R. 60). Mr. Seltzer, after consulting with Petitioner Clifford, called Judge Silbert back and told him that the photograph would be published. It appeared upon the front page of editions of the Cleveland Press the same day.

On August 27, 1953, the Prosecutor, as a friend of the Court and appointed by said Court to prepare and prefer a charge of contempt against the Petitioners, charged contempt in said Court as follows:

> "That on August 20, 1953, while the Court of Common Pleas of Cuyahoga County, Ohio, Criminal Branch, was in session with the Honorable Joseph H. Silbert presiding, and while Nelson J. Brewer was being arraigned on an indictment then and there pending against him in said Court, being Common Pleas case No. 63332, James Thomas, a photographer employed by the Cleveland Press, and at the direction of Louis Clifford and Sam Giaimo, the City Editor and Reporter of the Cleveland Press, respectively, entered the courtroom of said Court and took a photograph showing Nelson J. Brewer being arraigned, which photograph was later published in the Cleveland Press, a daily newspaper of general circulation in the State of Ohio and particularly in Cuyahoga County, Ohio, all of which was contrary to and in disobedience of the express order made by the Honorable Joseph H. Silbert that no photographs were to be taken in said courtroom and the said Respondents then and thereby transgressed the dignity and honor of the Court and obstructed the orderly administration of justice." (Pr. R. 1-2)

A hearing was had on this charge before the Honorable Joseph H. Silbert on September 9, 1953 and the petitioners were adjudged guilty of contempt for disobeying the order of the court. The finding that the petitioners

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were guilty of contempt was based upon the violation of the court's order in taking the photograph in the courtroom while the court was in session, and not upon its publication (Pr. R. 5) (Pet. Br., App. pp. 23-24).

Giaimo testified on the contempt hearing that the Court had said in chambers that "nobody is going to jail and nobody is going to be cited for contempt, not like somebody else did" (Pr. R. 29). The record shows that the Court was instructing Giaimo and Watzman beforehand that no photographs were to be taken at the arraignment of Mr. Brewer so that nobody would go to jail or be cited for contempt for violation of the order as was done in a case of a reporter who took a photograph in the courtroom of Judge Frank J. Merrick in the preceding term (Pr. R. 29).

That the petitioners knew they were violating an express order of the court in taking the photograph in question is unequivocally shown in the record. Giaimo testified on direct examination:

> "As I left the Judge said, 'No pictures permitted in the courtroom or in the chambers. Is that clear to you, Mr. Giaimo?'
>
> "I said, 'I understand your order. It is very clear. Thank you!' " (Pr. R. 20.)

On cross-examination Giaimo testified:

> "Mr. Giaimo, on the evening of the 19th when you left Judge Silbert's chambers you knew that he had issued an order that no photographs were to be taken in the courtroom or in chambers?
>
> A. He told me he wouldn't permit photographs in the courtroom or in the chambers because of the Canon recently adopted by the Cleveland Bar Association which he would have to abide by because he was a lawyer and would be subject to disciplinary action

by the Bar if he permitted pictures. I knew that, yes. He explained that to me.

Q. And you communicated that information to Mr. Clifford?

A. Yes, without any detail.

Q. You told him, did you not, that the Judge had given an instruction that there was to be no pictures taken in the courtroom or in the chambers?

A. Yes. I told Mr. Clifford that the Judge said there would be no pictures permitted in the courtroom or in the chambers because of the Canon of Judicial Ethics.

Q. What did Mr. Clifford say to that?

A. He said, 'We will want to take pictures.'" (Pr. R. 25.)

Petitioner Clifford testified on direct examination:

"Q. Did you have a conversation with Mr. Thomas?

A. Yes.

Q. When did that take place?

A. Very shortly after I talked to Sam.

Q. What was that conversation?

A. It was in some detail. I told Jim to come here and take a photograph of Judge Brewer being arraigned before Judge Silbert.

Q. You did that aware of the wish expressed to Mr. Giaimo by Judge Silbert that no photographs be taken?

A. I was aware that Judge Silbert had told the lawyer that there would be no pictures taken in the court or in the office, and I was aware that Judge Silbert had told Sam Giaimo that there was to be no picture taken, and I was aware that Giaimo had told Judge Silbert that he understood that order but made no promise of what he or the Press would do." (Pr. R. 46.)

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Further, no claim was made on the hearing on the contempt that the petitioners were under any mistaken belief that the Court did not expect its order to be obeyed. In contempt proceedings for a direct contempt, the court can take judicial notice of what was said, having been present, needs no evidence and may proceed upon its own knowledge of the facts. *State v. Myers, supra*; 9 *O. Jur.*, pp. 168-169, Sec. 85; *Ex parte Terry,* 128 U. S. 289, 32 L. Ed. 405, 9 S. Ct. 77.

The claim is made that the Petitioner Thomas had no knowledge of the Judge's conversation with Giaimo respecting courtroom photographs (Pet., p. 6). The Record establishes that the circumstances under which Thomas took this photograph were such that there cannot be much question but that he had full knowledge of the order that had been issued by Judge Silbert.

Clifford went into a great deal of detail in instructing Thomas to particularly get the photograph on the arraignment (Pr. R. 46-47). Thomas had been warned by Giaimo that there might be trouble (Pr. R. 29, 34). A significant fact also shown in the record is that after taking the photograph, Thomas did not retain the plate in his possession but passed it to Giaimo shortly after taking the picture (Pr. R. 27-28). The plate was then passed to Jim Vail, a Cleveland Press reporter, who delivered it to the Cleveland Press office (Pr. R. 47-48). The record further shows that Thomas disturbed the Court by interrupting the proceedings at the time he took the photograph in the courtroom.

ARGUMENT.

Reasons for Not Granting the Writ.

1. It is contended that the Common Pleas Court's order that no pictures were to be taken in the courtroom while the court was in session restrained the petitioners from obtaining or publishing news of a criminal trial (Pet. pp. 9-10).

The court did not presume to interfere with the rights of the petitioners to fully report and publish the proceedings on the arraignment, and the petitioners did extremely well in detailing every fact of the arraignment. Further, the record shows that the petitioners obtained pictures of Mr. Brewer immediately preceding and following this session of the court (Petitioners' Exhibits B, C, D, E, F, Pr. R. 109-113), and were not restrained by the court in the taking or publishing of any such pictures.

The point is that the petitioners were not content with the opportunities they had to secure this man's picture before and after the court session, and deliberately challenged the authority of the Court over the conduct of its courtroom. If the incident that happened in this case were multiplied, as the Court of Appeals and Ohio Supreme Court stated: "If one photographer can take pictures, others should have equal rights" (Pet., App. A, pp. 36, 41) our courtrooms could be turned into public spectacles, with newspaper photographers and television cameramen riding roughshod over the Courts during the conduct of their sessions and the Constitutional guaranty of a fair trial in a criminal case could be abridged.

The cases the petitioners cite under this first claim are not in point. *Grosjean v. American Publishing Co.* (Pet., pp. 9-10) was an action to enjoin the enforcement of a state statute; *Near v. Minnesota* (Pet., p. 10) involved

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the constitutionality of a Minnesota statute providing for the abatement as a public nuisance of malicious and defamatory newspapers. *Craig, et al. v. Harney* (Pet., p. 10), was a contempt action for the publication, while a motion for new trial was pending, of newspaper articles which unfairly reported the facts of a civil case and an editorial criticizing the judge's conduct of the trial.

2. The petitioners claim that the communication of ideas by picture, equally with the printed word, is included within the rights of free speech and a free press.

The petitioners were not restrained by the court from taking pictures of this man and the record shows that they had any number of pictures of him to show the public what he looked like, if the public were interested in his features.

The public's right to know about what occurs in a courtroom during a trial, except for morbid curiosity, is not concerned with the physical characteristics and attributes of the litigants, attorneys, the judge, or even the courtroom itself, which visible objective facts are the only information that a newspaper photograph can convey to the people.

What the people have a right to know is that the principles of law and justice are being universally practiced in the courtroom during sessions of the court. That knowledge cannot be portrayed literally in a newspaper photograph.

Again, the cases which the petitioners cite under this second claim are not pertinent. *Burstyn, Inc. v. Wilson* and *Superior Films, Inc. v. Ohio* (Pet., p. 10), were concerned with licensing statutes in New York and Ohio for the exhibition of motion pictures.

3. The petitioners cite *Bridges v. California, Pennekamp v. Florida* and *Craig v. Harney,* claiming that in those cases this Court limited the contempt powers of a court to a showing that "the exercise of such power is necessary to meet a clear, present and highly imminent danger to the administration of justice" (Pet., p. 11).

The Court of Appeals of Cuyahoga County and the Supreme Court of Ohio stated in their opinions in the instant case:

> "In the case of Bridges v. California, 314 U. S. 252 (266), 86 L. Ed. 192 (205), 62 S. Ct. 10, 159 A. L. R. 1346, the Supreme Court of the United States held that both state and federal courts have the power to protect themselves from disturbances and disorders in the courtroom by the use of proceedings in contempt and that power cannot be challenged as conflicting with constitutionally secured guaranties of liberty." (Pet., App. A, pp. 35, 40.)

Neither the *Bridges, Pennekamp* or *Craig* cases, therefore, support the petitioners' position in the instant case, as contended. Moreover, applying the "clear and present danger" test to the case at bar, we know of no greater danger to the administration of justice than this attempt of the petitioners to reduce the authority of a court over the conduct of its courtroom while in session.

4. It is argued further by the petitioners that "nothing in the decisions of this Court or in constitutional principle suggests that the power of a state court to abridge or limit freedom of speech and of the press is any greater because the allegedly contemptuous act occurred in the presence of the court" (Pet., p. 11).

In answer to that, the petitioners are overlooking what Mr. Justice Black said in delivering the opinion of this Court in the *Bridges* case:

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(314 U. S. 252, 266):

> "To be sure, it occurred no more to the people who lived in the decades following Ratification than it would to us now that the power of courts to protect themselves from disturbances and disorder in the court room by use of contempt proceedings could seriously be challenged as conflicting with constitutionally secured guarantees of liberty."

And the petitioners in so claiming, are overlooking the decision of this Court in *Fisher v. Pace, supra,* in which the Court held that the inherent power of a court to punish contempt in the presence of the court is "not open to question." And no "clear and present" danger test was applied by this Court in that case.

5. The petitioners state that reporting and publishing news to keep the people informed with respect to the administration of justice in their courts is not as accurate as the taking and publishing of pictures (Pet., p. 12).

If the written description of the reporters present at the arraignment did not accurately inform the public that Mr. Brewer "was treated precisely the same as the most humble citizen" (Pet., p. 12), we don't see how a photograph could tell the public what was said or done in that courtroom on the arraignment, nor how a photograph could correct their inaccurate reporting.

There was no attempt on the part of the court to censor any report of these proceedings or to prohibit a publication of any matters of fact in connection with such proceedings.

6. The petitioners argue that there was no showing of an interference with the administration of justice in the taking of this photograph; that it occasioned only a brief pause made necessary by the court's "unjustified

pique" and that it did not create any "clear or present danger" to the administration of justice. Under this claim the petitioners admit that pictures might be taken to such an extent and under such circumstances as "to interfere with the administration of justice" (Pet., pp. 12-13).

If the taking of this photograph in the courtroom during the arraignment of Mr. Brewer in defiance of the court's express order—if that is not contempt and an obstruction of the administration of justice—then we have a principle established where the incident could be multiplied by numerous newspaper photographers entering a courtroom while the court is in session, either at arraignment or during the progress of a trial, and indiscriminately taking photographs. Such acts obviously would be disconcerting and interruptive of the orderly administration of justice. Whether there was a brief pause or a long pause in the arraignment proceeding occasioned by the taking of the picture is no reason why the petitioners should be at liberty to ignore a positive judicial order. A trial judge must have complete authority in his courtroom to insure that nothing distracting or disconcerting is done by the non-litigants who may be present. The judge's interpretation and discretion as to what may distract or disconcert his court must be final. The judge's authority in that regard cannot be summarily infringed by anyone, including newsaper men.

A case on all fours with the principle involved in the instant case is that of *Ex Parte Sturm, et al.* (152 Md. 114, 136 Atl. 312) (Maryland Court of Appeals—1927), 51 A. L. R. 356, a case which has not been reversed, modified or overruled on the question of the power of the court to forbid the use of cameras in its courtroom while the court is in session.

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In upholding the trial judge, the Maryland Court of Appeals stated, in 51 *A. L. R.*, at page 361:

> "The challenge in this case of the court's right to forbid the use of cameras in the courtroom during the progress of the trial presents an issue of vital importance. If such a right should yield to an asserted privilege of the press, the authority and dignity of the courts would be seriously impaired. It is essential to the integrity and independence of judicial tribunals that they shall have the power to enforce their own judgment as to what conduct is incompatible with the proper and orderly course of their procedure. If their discretion should be subordinated to that of a newspaper manager in regard to the use of photographic instruments in the courtroom, it would be difficult to limit the further reduction to which the authority of the courts would be exposed. It would be utterly inconsistent with the position and prerogatives of the judiciary, as a co-ordinate branch of government, to require its submission to the judgment of a non-governmental agency as to a question of proper conduct in the judicial forums."

At page 362:

> "But the duty and disposition of a court to accord a justly ample scope to the liberty of the press should not be carried to the point of an undue abridgment of the court's own freedom. There are proper spheres within which the courts and the press may operate without any conflict of interest or purpose. In this case the liberty of the press has been invoked in support of acts which were an invasion of the domain within which the authority of the courts is exclusive. A due regard for the integrity of the judicial power forbids, and the legitimate interests of the press do not require, that such an encroachment should be sanctioned."

7. The petitioners claim that if the taking of a picture interfered with the administration of justice, it is incredible that the judges of the Common Pleas Court and Judge Silbert in particular would not have adopted such a rule long ago. We see no merit to the argument that other judges and Judge Silbert may have tolerated the taking of pictures in their courtrooms for many years. The petitioners violated an express order of the Court in this case.

8. It is argued that the contempt charged in the written citation included the taking and publishing of the picture, and that Judge Silbert ruled that the taking and publishing of the picture constituted "one continued act of contempt," Pet., p. 14; that in so doing he censored the publication of "news."

The petitioners were not charged in the written citation with contempt for having violated any order of the court forbidding the publication of "news" or photographs, nor did the court so find. They were charged with "disobedience of the express order made by the Honorable Joseph H. Silbert that no photographs were to be taken in said courtroom." While the Court did request the Editor of the Cleveland Press not to publish the photograph and the President of the Cleveland Bar Association made a similar request, the finding that the petitioners were guilty of contempt was based upon the violation of the court's order in taking the photograph while the court was in session, and not for having published the picture. (Pr. R. 5.) There was no finding made by the court that the petitioners were guilty of contempt for having published the picture. The court made no order in this case prohibiting the publication of any photographs.

9. *Bridges v. California* is again cited by the petitioners in connection with their ninth claim that the Ohio

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Supreme Court held that a mere potential possibility of causing a distraction is sufficient, but this Court's holding in the *Bridges* case supports the position of the Respondent herein, that the courts have inherent power to protect themselves from disturbances and disorder in the courtroom by the use of contempt proceedings. Nor is the Ohio Supreme Court decision in this case in conflict with the holding in the *Bridges* case.

10. The petitioners state that the Respondent cited *United States v. United Mine Workers,* 330 U. S. 258, and *Gompers v. Buck's Stove & R. Co.,* 221 U. S. 418 in the courts below and contended that violation of a void order was nevertheless contempt. That is, of course, not the fact. In the Courts below the petitioners were claiming that the order of the court in the instant case was invalid and that an invalid order is properly tested by its disobedience. It was contended in the courts below that Petitioner Clifford specifically directed the taking of the photograph with the thought in mind that there was no valid order which could be violated. In other words, the Petitioner Clifford made himself a judge of the validity of the order and set the order aside.

We cited the foregoing cases in answer to that claim and argued that John L. Lewis did the same thing. He said that an order of the Court was invalid and illegal and defied the order. The United States Supreme Court said that it wasn't for Lewis to say whether the order was legal or illegal; he had his right of appeal. Lewis ignored a temporary restraining order of a District Court and allowed a nation-wide strike to become an accomplished fact. The United States Supreme Court used unequivocal language in condemning such conduct, in the case of *United States v. United Mine Workers of America,* 330 U. S. 258, 67 S. Ct. 677, 91 L. Ed. 884 (1947).

Mr. Chief Justice Vinson delivered the opinion of the Court in this contempt action against Lewis and stated, at pages 292, 293:

> "In the case before us, the District Court had the power to preserve existing conditions while it was determining its own authority to grant injunctive relief. The defendants, in making their private determination of the law, acted at their peril. Their disobedience is punishable as criminal contempt."

And again, at pages 293-295:

> "It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished."

In *Gompers v. Buck's Stove & Range Company*, 221 U. S. 418, 450, 55 L. Ed. 79⁷, 809, 31 S. Ct. 492 (1911), Mr. Justice Lamar stated:

> "If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery."

The petitioners cite *State v. Morrow* (Pet., p. 15), The case is not pertinent. In the *Morrow* case an editor was charged with contempt for publishing matters of public record such as the names of Grand Jurors.

An examination of the opinion of the Ohio Supreme Court will show that there was no such language used or holding in their decision in the instant case that "the federal constitutional rights claimed by Petitioners were

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not, as a matter of federal constitutional law, broad enough to constitute a good defense." (Pet., p. 15).

Nor was there anything "dubious" about the holding of the Ohio Supreme Court in this case, that an "express" order of the lower court was violated by the petitioners. The petitioners contended in the Court of Appeals and in the Ohio Supreme Court that the order of the court having been made in chambers and not having been reduced to writing, was not an "express" order, and they sought to confine disobedience of a court's lawful orders to those which have been reduced to writing and journalized, thereby leaving unpunishable in contempt proceedings, the verbal commands, directions and orders of a court.

From the time a case is pending before the Court, many orders and commands are given by the Court which are not reduced to writing but they are nonetheless, express orders and the person to whom they are made is bound to obey them. The right inheres in the Court to compel due decorum and respect in its presence and due obedience to its orders, and to punish for contempt those who interfere with the Court's conduct of its business, whether the Court has made a written or a verbal order.

In *Belden v. Scott,* 150 O. S. 393 (1948), there was no written order in effect at the time of the contempt and the Court said:

> "Stott was actually in court and was not only apprised of the order of the court but consented thereto. It was after such order was made and with full knowledge thereof that he violated it * * *.
>
> "He comes within the rule, well established and of long standing, that one who has actual notice of an order of injunction and disobeys it is guilty of a contempt although the injunction has not been served upon him or issued, or the order formally drawn up.

Dangel on Contempt, 121; 43 Corpus Juris Secundum, 1010, Section 261. The mandate of the court being effectual upon all parties having notice thereof from the time it was given, it is necessary to fix defendant's liability for a violation, to show only that he was actually apprised of the existence of the order at the time of committing the acts constituting the violation; 12 American Jurisprudence, 405, Section 24, and cases cited."

In *Robertson v. Commonwealth,* 181 Va. 520, 25 S. E. (2d) 352, 146 A. L. R. 966 (1943), it was held:

"The term 'order,' as used in a statute providing for punishment by a court for resistance to any lawful 'order' of the court is not confined to orders reduced to writing, but includes the verbal commands, directions, or orders of the court made during the course of a trial."

In that case, Eggleston, *J.*, stated (146 *A. L. R.* at page 971):

"To hold, as contended by the plaintiff in error, that it was the purpose of the statute to confine summary punishment for disobedience of a court's 'lawful orders' to those which have been reduced to writing, and thereby leave unpunishable in summary contempt proceedings the verbal commands, directions and orders of the court, would, we think, deprive the courts of their 'inherent power of self-defense and self-preservation,' and would 'so far diminish their authority * * * as to render them incapable of the efficient exercise of their functions,' and would, therefore, be entirely incompatible with our holding in Yoder v. Commonwealth, supra, that the statute is constitutional."

In *Fisher v. Pace, supra,* there was no journal entry of the order of the court for which the defendant was held

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in contempt. An attorney was committed for contempt for not obeying the verbal orders of the court.

Whether the instruction of the court to the petitioners was announced from the bench or, as in this case, given in chambers, the record shows that they acted with full knowledge and in defiance of the order.

11. The final claim of the petitioners is that the decision of the Ohio Supreme Court, if not in conflict with the decisions of this Court, nevertheless raises a question with respect to the application of the First and Fourteenth Amendments. As heretofore stated, this Court decided in *Fisher v. Pace, supra,* that the inherent power of courts to punish contempts in the face of the court is not open to question; in *Bridges v. California* that such power of the court cannot be seriously challenged as conflicting with constitutionally secured guarantees of liberty, and in *Ex Parte Terry,* 128 U. S. 289, 313, 32 L. Ed. 405, 412, 9 S. Ct. 77 it is stated:

> "We have seen that it is a settled doctrine in the jurisprudence both of England and of this country, never supposed to be in conflict with the liberty of the citizen, that for direct contempts committed in the face of the court, at least one of superior jurisdiction, the offender may, in its discretion, be instantly apprehended and immediately imprisoned, without trial or issue, and without other proof than its actual knowledge of what occurred; and that, according to an unbroken chain of authorities, reaching back to the earliest times, such power, although arbitrary in its nature and liable to abuse, is absolutely essential to the protection of the courts in the discharge of their functions. Without it, judicial tribunals would be at the mercy of the disorderly and violent, who respect neither the laws enacted for the vindication of public and private rights, nor the officers charged with the duty of administering them."

CONCLUSION.

It is essential to the integrity of the Courts that they shall maintain the power to regulate procedure and decorum in the courtroom while the court is in session and that such discretion of the Court over the conduct of its affairs shall not be subordinated to that of an Editor, City Editor, reporter or photographer of a newspaper.

As the Ohio Supreme Court stated in this case:

> "The judge in enforcing orders directing proper and necessary decorum in the courtroom, while the court is in session, must see to it that the rules enforced are reasonable and necessary for that purpose. Under the undisputed evidence in this case, the rule against taking photographs in a courtroom while the court is in session has much support. Such a rule is in force in all of the federal courts of the United States, is clearly stated in the Canons of Judicial Ethics of the American Bar Association, and is recognized as necessary courtroom decorum by many state and local bar associations and by a great many individual judges of state courts." (Pet. App. A, p. 39.)

In view of all of the foregoing, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIORARI DENIED